IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 32875 of 2006(L)

PETITIONER:

A.S. BINUKUMAR,
SARSWATHY BHAVANAM, POONTHURA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

1. **KERALA PUBLIC SERVICE COMMISSION,**
   REPRESENTED BY THE SECRETARY, KERALA PUBLIC SERVICE COMMISSION, THIRUVANANTHAPURAM.

2. **THE DISTRICT OFFICER,**
   KERALA PUBLIC SERVICE COMMISSION,
   THIRUVANANTHAPURAM.

3. **STATE OF KERALA,**
   REPRSENTED BY SECRTARY TO GOVERNMENT,
   DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT,
   THIRUVANANTHAPURAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON 06.03.2007 DELIVERED THE FOLLOWING:

W.P.C NO.32875/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CERTIFICATE DT.17.1.97 ISSUED BY THE TAHSILDAR KALIKULAM.

EXT.P2:- COPY OF THE CERTIFICATE DT.1.8.05.

EXT.P3:- COPY OF THE LETTER DT.20.9.05.

EXT.P4:- COPY OF THE REPRESENTATION DT.30.9.05 SUBMITTED BY THE PETITIONER BEFORE THE COLLECTOR, THIRUVANANTHAPURAM.

EXT.P5:- COPY OF THE CERTIFICATE SHOWING THE PLACE OF BIRTH OF THE PETITIONER.

EXT.P6:- COPY OF THE CERTIFICATE ISSUED BY THE TAHSILDAR , THIRUVANANTHAPURAM DT.6.10.05.

EXT.P7:- COPY OF THE REPRESENTATION DT.14..3.06 FILED BY THE PETITIONER BEFORE THE CHAIRMAN, KPSC.

EXT.P8:- COPY OF THE REPRESENTATION DT.14.3.06 FILED BY THE PETITIONER BEFORE THE SECRETARY, KPSC.

EXT.P9:- COPY OF THE POSTAL RECEIPT .

EXT.P10:- COPY OF THE ACKNOWLEDGEMENT CARDS.

EXT.P11:- COPY OF THE RANKED LIST.

EXT.P12:- COPY OF THE CERTIFICATE DT.5.10.02 ISSUED BY THE VILLAGE OFFICER, MUTTATHADA.

EXT.P13:- COPY OF THE CIRCULAR DT.23.9.05.

EXT.P14:- COPY OF THE JUDGMENT DT.30.5.06 IN WP(C) NO.14070/06.

EXT.P15:- COPY OF THE LETTER DT.20.7.06 ISSUED BY THE 2ND RESPONDENT.

/TRUE COPY/

tss

K.M.JOSEPH, J.

- -

WP.(C) No.32875 OF 2006

- -

Dated this the 6th day of March, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner applied for the post of HSA (English) in Thiruvananthapuram District. He was included in the short list. He was called for an interview on 27.7.2005. At the time of interview petitioner produced Ext.P1 certificate dated 17.1.1997 issued by the Tahsildar, Kalkulam. Petitioner was born in Thiruvananthapuram. After studying upto tenth standard in Thiruvananthapuram, he studied for plus two, B.A., M.A., B.Ed and M.Ed at Kanyakumari. Petitioner's father had a relative's house in Manavalakurichi village in Kanyakumari in Tamil Nadu District. On production of Ext.P1 Commission orally asked for a community certificate issued by the Tahsildar having jurisdiction over the petitioner's place of birth, namely, Tahsildar of Thiruvananthapuram District. Ext.P2 certificate dated 1.8.2005 was issued by the Tahsildar, wherein it is stated that petitioner having the address shown in Thiruvananthapuram belongs to

Hindu Nulayan community, a community which is designated as a backward class in the State of Tamil Nadu. It is also certified by him that he belongs to Non-creamy layer. Petitioner submitted Ext. P2 before the PSC, which did not accept the said certificate. Ext.P3 letter dated 20.9.2005 was issued, wherein it is stated that in Ext.P2 it is recorded that petitioner belongs to Nulayan in Tamil Nadu and the petitioner should produce the certificate showing that he is a resident of Kerala and also showing that the petitioner belongs to a backward community in Kerala. Petitioner thereupon approached the Collector and made Ext.P4 representation dated 30.9.2005. Collector conducted enquiry through subordinate officers. Petitioner produced Ext.P5 birth certificate issued from the Government Hospital, Thiruvananthapuram. Ext.P6, a fresh certificate was issued by the Tahsildar, Thiruvananthapuram. Ext.P6 is dated 6.10.2005. It was produced on 7.10.2005 before the PSC. Though he was told that his name will be included in the list, when it was published on 26.9.2005 his name was not included. He made Exts. P7 and P8 representations. Ext.P11 is the rank list. Ext.P12 is the certificate issued by the Village Officer to

show that he was born and brought up in Thiruvananthapuram District. Petitioner preferred writ petition, which culminated in Ext.P14 judgment. The request of the petitioner pursuant to judgment is rejected. In Ext.P16 it is stated that it was decided not to accept the non-creamy layer certificate. Petitioner challenges Ext.P15 and seeks a direction to reveal the result of the petitioner, who is No.193 in Ext.P1 rank list and to include the petitioner's name.

2. The stand taken in the counter affidavit inter alia is that the petitioner is challenging Ext.P5 communication dated 20.7.2006 on 3.12.2006. The rank list was finalised on 26.9.2005. Though petitioner is seeking inclusion in the rank list, none of the persons are made parties and the writ petition is not maintainable on the ground of non-joinder of necessary parties and belated challenge. It is stated that SC/ST and OBC in the State of Kerala are separately identified. Under the general conditions attached to the Notification a candidate seeking appointment through the PSC under the State of Kerala has to submit the caste and community certificate issued by the revenue authority not below the rank of a Village Officer of the concerned Village where

they reside. Ext.P1 cannot be of any assistance and cannot avail the petitioner. Reliance is placed on Rule 17(c) of K.S. & S.S.R to contend that the community, caste certificate shall be produced before the finalisation of the rank list. But petitioner has not produced the relevant certificate in time. Since the petitioner has not produced the relevant certificate in time, the Commission decided not to accept the certificate issued on 6.10.2005 issued by the Tahsildar, as in terms of the Rule the Commission cannot entertain or accept a certificate submitted after the finalisation of the rank list. It is stated that on the basis of the direction of this court to file a counter affidavit indicating the probable rank position if the petitioner is included in the list, the probable rank of the petitioner will be Rank No.1 in the supplementary list of Dheevara community if the petitioner was included in the list.

3. Heard counsel for the parties. Learned counsel for the petitioner Sri.Kaleeswaram Raj contended that the petitioner belongs to a poor family from a backward caste. Though petitioner belongs to Kerala, after SSLC petitioner went and pursued further education in Tamil Nadu, where he had a relative.

4. He would rely on the decision of this court reported in **Prasad v. Kerala Public Service Commission (**2004(1) K.L.T. SN 26 Case No.32). The short facts of the case are as follows:

The petitioner therein applied for the post of LD Clerk. At the time of the interview petitioner was not in possession of the original of the SSLC Book and the certificate of Higher Secondary Course as it had been surrendered to the Calicut University. The petitioner was told that if the documents were not produced then and there, her name will not be included. She was shocked and she had to be admitted to Medical College Hospital for a period of 12 days and after discharge, she obtained the certificate on the next day, but she was told that it was not acceptable as her name was deleted from the rank list, it was submitted. Therein the court took the view that turning a blind eye towards her plight could not be characterised as an act in advancement of cause of justice and the court directed that if she makes available all the relevant documents within one week, appropriate rank will be given to her.

5. Learned counsel for the respondents on the other hand relies

on the decisions of this court reported in **Kerala Public Service Commission v. Saroja Nambiar** (ILR 1978(2) Kerala 241), **District Officer, K.P.S.C. v. Karthikeyan** (1989(1) K.L.T. 46), and in **R.Rangaswamy v. Kerala Public Service Commission** (ILR 1982(2) Kerala 59). In the decision reported in **Kerala Public Service Commission v. Saroja Nambiar** (ILR 1978(2) Kerala 241) the court took the view that PSC was justified in rejecting the application of a candidate, who had not complied with the condition regarding production of document to prove qualification. In the decision reported in **R.Rangaswamy's Case** the application was to be sent in a form costing Rs.5/-. The petitioner therein sent the application in the prescribed form along with a copy in another form bearing 50 paise stamp though the Inspector General of Police, Trivandrum. The rejection of the application was justified on the basis that the applications are not in strict compliance with the conditions and stipulations and there was no discretion given to the Commission to relax the conditions in the notification. It was also found that it is not within the province of this court to extend any sympathy in this case.

6. In the decision reported in **District Officer, K.P.S.C. v. Karthikeyan 1989** (1) K.L.T. 46) a Division Bench of this court had dealt with a case where the first respondent therein was treated as member of the OBC. The rank list was published and twenty months thereafter the first respondent approached the PSC with a request to consider his claim as a member of the Scheduled Caste. He claimed that he belonged to Vannan community. This was rejected on the ground that the first respondent claimed that he belong to Peruvannan. The court took the view that the PSC having acted on the basis of the stand taken by him earlier, it is impossible to suggest that the Commission could have dealt with the application of the person as a member belonging to Scheduled Caste. The court found that it was not his case, that it was not his information that he furnished. The action of the PSC could be interfered with if it is arbitrary. It was held that in the circumstances it was impossible to suggest that the PSC acted unreasonably.

7. Rule 17C of K.S. & S.S.R. Reads as follows:

> "17C. The candidate claiming the benefit of age

> relaxation/reservation in appointments/special recruitments by virtue of being a member of the Backward Classes/Scheduled Castes/Scheduled Tribes as provided for in sub-rules (c) and (d) of rule 10, rule 14, rule 17A and rule 17B ibid shall produce to the satisfaction of the Kerala Public Service Commission, Certificates/relevant documents as required by them, to prove the claim in the application and in any case, before the finalisation of the ranked list for the post concerned."

It mandates that certificates meant to prove the matters mentioned there are to be produced to the satisfaction of the Commission before the rank list is finalised. In this case, the rank list was finalised and it was published on 26.9.2005. Petitioner had relied on Ext.P1 certificate issued by the Tahsildar of Kalkulam. Apparently this was not acceptable. By Ext.P3 dated 20.9.2005 petitioner was given seven days time to produce the certificate showing that he is a resident in Kerala belonging to Non-creamy layer of a backward class in the State of Kerala. It is thereafter that petitioner has made Ext.P4 application and ultimately procured Ext.P6 certificate. Ext.P6 is the certificate issued

by the Tahsildar, Thiruvananthapuram dated 5.10.2005. But the rank list was published as already noted on 26.9.2005. No doubt, learned counsel for the petitioner Sri. Kaleeswaram Raj would contend that it could not be a matter of debate that Hindu Nulayan community is a backward class in the State of Kerala and having regard to Exts.P1 and P2 and further having produced Exts.P6 and P7, which brings out the facts that the interest of justice should not be defeated by rejecting a genuine claimant like the petitioner. He further pointed out that as stated in the counter affidavit, if the writ petition is allowed, the petitioner would be ranked No.1 in the supplementary list.

8. As far as Ext.P1 goes, it is dated 17.1.1997 and it was issued by the Tahsildar in Tamil Nadu. It would show that petitioner is ordinarily residing in a district in Tamil Nadu and it shows that he belongs to Hindu Nulaya community. Apparently the petitioner had resided in Tamil Nadu after having passed the SSLC as contended by him. Ext.P2 is the certificate issued by the Tahsildar, Thiruvananthapuram, which is dated 1.8.2005. It apparently proceeds on the basis that petitioner is residing in Tamil Nadu as it is stated

therein after referring to the address of the petitioner in Thiruvananthapuram that petitioner belongs to Hindu Nulaya community, which is designated as backward class in Tamil Nadu. Apparently petitioner acted on the basis of Ext.P3. As stated in paragraph 4 of the writ petition, petitioner in view of Ext.P3 filed Ext.P4 and ultimately Ext.P6 was issued. But it was issued only on 5.10.2005. I am of the view that interference in his favour may not be warranted.

9. Rule 17C is a statutory rule which binds the PSC. Apparently this is a rule of general application. It is clear that as the Commission was not satisfied with Exts.P1 and P2, petitioner was called upon to produce the certificate as already noted in Ext.P3 within seven days. The rank list was brought on 26.9.2005. Ext.P6 is dated in the month of October, 2005. Thus petitioner has not produced a certificate as contemplated in Rule 17C to the satisfaction of the PSC. In such circumstances accepting the claim of the petitioner amounts to asking the PSC to act contrary to the statute. It is to be noted that in the judgment of a learned Single Judge relied on by the petitioner there

was no question of violating of Rule 17C as such. That apart it is to be noted that petitioner has filed the writ petition only on 3.12.2006. The rank list was published as early as on 26.9.2005. If the probable rank of the petitioner going by the counter affidavit is to be No.1 in the Dheevara list, the persons affected are also not impleaded before this court.

Having regard to the totality of facts and circumstances, I am constrained to decline relief to the petitioner. The writ petition is dismissed.

(K.M. JOSEPH, JUDGE)

sb

K.M.JOSEPH, JJ.

- - - - - - - - -- -

W.A. No. OF

- -- - - - - - - - - - - - - - -

JUDGMENT

Dated this the day of February, 2006.